

MONTANA LEGISLATIVE HISTORY

Chapter 288 19 77  
Bill H \_\_\_\_\_ S 257 Original bill & history ☒ c

|                 |                                                   |                 |                                                   |
|-----------------|---------------------------------------------------|-----------------|---------------------------------------------------|
| H. Committee on | <u>Judiciary</u>                                  | S. Committee on | <u>Judiciary</u>                                  |
| Hearing Date(s) | <u>3-12</u> <input checked="" type="checkbox"/> c | Hearing Date(s) | <u>1-28</u> <input checked="" type="checkbox"/> c |
|                 | <u>3-25</u> <input checked="" type="checkbox"/> c |                 | <u>2-1</u> <input checked="" type="checkbox"/> c  |
|                 | _____ c                                           |                 | _____ c                                           |
|                 | _____ c                                           |                 | _____ c                                           |
| Date Out        | _____ c                                           |                 |                                                   |

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Did this bill originate in an interim committee? ☐ Yes ☐ No  
Committee \_\_\_\_\_ Report \_\_\_\_\_

### LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SB 254 Introduced by Grosfield *LC0978 Drafter: Everts*

Submit to the Electorate an Air Quality Operation Fee Increase;...

1/21 Introduced and 1st Reading  
1/21 Referred to Natural Resources  
2/01 Hearing  
3/27 Tabled in Committee  
3/31 Missed Deadline for Revenue Bill Transmittal

SB 255 Introduced by Grosfield *LC0977 Drafter: Everts*

Establish a New Air Quality Application Fee;...

12/04 Fiscal Note Needed  
1/21 Introduced and 1st Reading  
1/21 Referred to Natural Resources  
2/01 Hearing  
3/27 Tabled in Committee  
3/31 Missed Deadline for Revenue Bill Transmittal

SB 256 Introduced by Grosfield *LC0765 Drafter: Petesch*

Generally Revise the Laws Authorizing Governmental Entities to Charge Fees;...

11/30 Fiscal Note Needed  
1/21 Introduced and 1st Reading  
1/21 Referred to State Administration  
1/28 Hearing  
Died in Process

SB 257 Introduced by Grimes, et al. *LC1570 Drafter: Lane*

Revise Certain Laws Relating to Sex Offenses;...

1/21 Introduced and 1st Reading  
1/21 Referred to Judiciary  
1/28 Hearing  
2/02 Committee Executive Action--Bill Passed 8 0  
2/02 Committee Report--Bill Passed  
2/05 2nd Reading Passed 49 0  
2/06 3rd Reading Passed 48 0

Transmitted to House  
2/16 Referred to Judiciary  
3/12 Hearing  
3/25 Committee Executive Action--Bill Concurred 20 0  
3/26 Committee Report--Bill Concurred  
3/29 2nd Reading Concurred 95 3  
3/30 3rd Reading Concurred 98 2

Returned to Senate  
3/30 Sent to Enrolling  
3/31 Returned from Enrolling  
3/31 Signed by President  
4/07 Signed by Speaker  
4/07 Transmitted to Governor  
4/09 Signed by Governor

4/12 Chapter Number Assigned  
Chapter Number 288  
Effective Date: 10/01/1999 - All Sections

SB 258 Introduced by Grimes, et al. *LC1161 Drafter: Lane*

Revise the Laws Related to Victims of Partner and Family Member Assault, Victims of Sexual Assault, and Victims of Stalking;...

1/21 Introduced and 1st Reading  
1/21 Referred to Judiciary  
1/21 Fiscal Note Requested  
1/25 Fiscal Note Received  
1/28 Fiscal Note Printed  
2/01 Hearing  
2/05 Committee Executive Action--Bill Passed as Amended 9 0  
2/05 Committee Report--Bill Passed as Amended  
2/08 2nd Reading Passed 48 0  
2/09 3rd Reading Passed 49 0

Transmitted to House  
2/16 Referred to Judiciary  
3/12 Hearing  
3/25 Committee Executive Action--Bill Concurred as Amended 18 2  
3/26 Committee Report--Bill Concurred as Amended  
3/30 2nd Reading Concurred 91 6  
3/31 3rd Reading Concurred 90 10

Returned to Senate with Amendments  
4/07 2nd Reading House Amendments Concurred 49 0  
4/08 3rd Reading Passed as Amended by House 50 0  
4/08 Sent to Enrolling  
4/10 Returned from Enrolling  
4/12 Signed by President  
4/13 Signed by Speaker  
4/13 Transmitted to Governor  
4/15 Signed by Governor  
4/16 Chapter Number Assigned  
Chapter Number 311  
Effective Date: 4/15/1999 - All Sections

SB 259 Introduced by Grimes *LC1567 Drafter: Lane*

Submit to the Electorate the Elimination of the Termination Date for the Civil Filing Fees for Filing of Petitions for Dissolution of Marriage and Separation for Funding of the Partner and Family Member Assault Intervention and Treatment Fund Account;...

1/11 Fiscal Note Needed  
1/21 Introduced and 1st Reading  
1/21 Referred to Judiciary  
1/26 Hearing  
1/26 Committee Executive Action--Bill Passed 6 0  
1/26 Committee Report--Bill Passed  
1/27 2nd Reading Passed 49 1  
1/28 3rd Reading Passed 48 1

Transmitted to House

Senate BILL NO. 257

INTRODUCED BY

(Primary Sponsor)

James Troviken  
BastlettEck Hayrone  
Bishop

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO SEX OFFENSES; PROVIDING THAT CERTAIN REASONS OTHER THAN SOLELY SEXUAL GRATIFICATION CAN FORM THE BASIS FOR SEXUAL CRIMES; REVISING THE DEFINITIONS OF "SEXUAL CONTACT" AND "SEXUAL INTERCOURSE"; REVISING THE OFFENSE OF INDECENT EXPOSURE; AND AMENDING SECTIONS 45-2-101 AND 45-5-504, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, ~~as defined in this code~~, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the

1 same offense or that affects the same person or the same persons or the property of the same person  
2 or persons.

3 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory  
4 functions by the manipulation of electronic or magnetic impulses and includes all input, output,  
5 processing, storage, software, or communication facilities that are connected or related to that device  
6 in a system or network.

7 (9) "Computer network" means the interconnection of communication systems between  
8 computers or computers and remote terminals.

9 (10) "Computer program" means an instruction or statement or a series of instructions or  
10 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning  
11 of a computer or computer system and causes it to perform specified functions.

12 (11) "Computer services" include but are not limited to computer time, data processing, and  
13 storage functions.

14 (12) "Computer software" means a set of computer programs, procedures, and associated  
15 documentation concerned with the operation of a computer system.

16 (13) "Computer system" means a set of related, connected, or unconnected devices, computer  
17 software, or other related computer equipment.

18 (14) "Conduct" means an act or series of acts and the accompanying mental state.

19 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or  
20 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of  
21 competent jurisdiction authorized to try the case without a jury.

22 (16) "Correctional institution" means ~~the~~ a state prison, county or city jail, or other institution for  
23 the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for  
24 offenses.

25 (17) "Deception" means knowingly to:

26 (a) create or confirm in another an impression that is false and that the offender does not believe  
27 to be true;

28 (b) fail to correct a false impression that the offender previously has created or confirmed;

29 (c) prevent another from acquiring information pertinent to the disposition of the property  
30 involved;

1 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or  
2 other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or  
3 is or is not a matter of official record; or

4 (e) promise performance that the offender does not intend to perform or knows will not be  
5 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

6 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association  
7 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business  
8 or occupation.

9 (19) "Deprive" means:

10 (a) to withhold property of another:

11 (i) permanently;

12 (ii) for such a period as to appropriate a portion of its value; or

13 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

14 (b) to dispose of the property of another and use or deal with the property so as to make it  
15 unlikely that the owner will recover it.

16 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons  
17 of the same sex or any form of sexual intercourse with an animal.

18 (21) "Document" means, with respect to offenses involving the medicaid program, any  
19 application, claim, form, report, record, writing, or correspondence, whether in written, electronic,  
20 magnetic, microfilm, or other form.

21 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or  
22 imprisonment in the a state prison for any term exceeding 1 year.

23 (23) "Forcible felony" means any felony that involves the use or threat of physical force or  
24 violence against any individual.

25 (24) A "frisk" is a search by an external patting of a person's clothing.

26 (25) "Government" includes any branch, subdivision, or agency of the government of the state  
27 or any locality within it.

28 (26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,  
29 including loss, disadvantage, or injury to ~~any~~ a person or entity in whose welfare the affected person is  
30 interested.

1 (27) A "house of prostitution" means any place where prostitution or promotion of prostitution  
2 is regularly carried on by one or more persons under the control, management, or supervision of another.

3 (28) "Human being" means a person who has been born and is alive.

4 (29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being  
5 in the possession of a person subject to official detention.

6 (30) "Inmate" means a person who engages in prostitution in or through the agency of a house  
7 of prostitution.

8 (31) (a) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter  
9 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more  
10 of alcohol by volume.

11 (b) Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced  
12 by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol  
13 by volume.

14 (32) An "involuntary act" means any act that is:

15 (a) a reflex or convulsion;

16 (b) a bodily movement during unconsciousness or sleep;

17 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

18 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,  
19 either conscious or habitual.

20 (33) "Juror" means ~~any~~ a person who is a member of any jury, including a grand jury, impaneled  
21 by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury  
22 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned  
23 to attend as a prospective juror.

24 (34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described  
25 by a statute defining an offense when the person is aware of the person's own conduct or that the  
26 circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute  
27 defining an offense when the person is aware that it is highly probable that the result will be caused by  
28 the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,  
29 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such  
30 as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the a state prison for any term of 1 year or less.

(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the

1 offender or to another; and

2 (b) in relation to labor or services, to secure the performance of the labor or service.

3 (44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the  
4 sale, conveyance, or transfer of title to, interest in, or possession of property.

5 (45) "Occupied structure" means any building, vehicle, or other place suitable for human  
6 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually  
7 present. Each unit of a building consisting of two or more units separately secured or occupied is a  
8 separate occupied structure.

9 (46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or  
10 punished for a public offense.

11 (47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is  
12 authorized. Offenses are classified as felonies or misdemeanors.

13 (48) "Official detention" means imprisonment resulting from a conviction for an offense,  
14 confinement for an offense, confinement of a person charged with an offense, detention by a peace  
15 officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose  
16 of the protection of the welfare of the person detained or for the protection of society. Official detention  
17 does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful  
18 arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to  
19 escape.

20 (49) "Official proceeding" means a proceeding heard or that may be heard before any legislative,  
21 judicial, administrative, or other governmental agency or official authorized to take evidence under oath,  
22 including any referee, ~~hearing~~ hearings examiner, commissioner, notary, or other person taking testimony  
23 or deposition in connection with the proceeding.

24 (50) "Other state" means any state or territory of the United States, the District of Columbia, and  
25 the Commonwealth of Puerto Rico.

26 (51) "Owner" means a person other than the offender who has possession of or any other interest  
27 in the property involved, even though the interest or possession is unlawful, and without whose consent  
28 the offender has no authority to exert control over the property.

29 (52) "Party official" means a person who holds an elective or appointive post in a political party  
30 in the United States by virtue of which the person directs or conducts or participates in directing or

1 conducting party affairs at any level of responsibility.

2 (53) "Peace officer" means ~~any~~ a person who by virtue of the person's office or public  
3 employment is vested by law with a duty to maintain public order or to make arrests for offenses while  
4 acting within the scope of the person's authority.

5 (54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or  
6 anything else the primary significance of which is economic gain.

7 (55) "Person" includes an individual, business association, partnership, corporation, government,  
8 or other legal entity and an individual acting or purporting to act for or on behalf of any government or  
9 subdivision of government.

10 (56) "Physically helpless" means that a person is unconscious or is otherwise physically unable  
11 to communicate unwillingness to act.

12 (57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate  
13 control.

14 (58) "Premises" includes any type of structure or building and any real property.

15 (59) "Property" means any tangible or intangible thing of value. Property includes but is not limited  
16 to:

17 (a) real estate;

18 (b) money;

19 (c) commercial instruments;

20 (d) admission or transportation tickets;

21 (e) written instruments that represent or embody rights concerning anything of value, including  
22 labor or services, or that are otherwise of value to the owner;

23 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any  
24 building;

25 (g) electricity, gas, and water;

26 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

27 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,  
28 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models  
29 thereof;

30 (j) any other articles, materials, devices, substances, and any whole or partial copies,

1 descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or  
2 record secret scientific, technical, merchandising, production, or management information or a secret  
3 designed process, procedure, formula, invention, or improvement; and

4 (k) electronic impulses, electronically processed or produced data or information, commercial  
5 instruments, computer software or computer programs, in either machine- or human-readable form,  
6 computer services, any other tangible or intangible item of value relating to a computer, computer system,  
7 or computer network, and any copies thereof.

8 (60) "Property of another" means real or personal property in which a person other than the  
9 offender has an interest that the offender has no authority to defeat or impair, even though the offender  
10 may have an interest in the property.

11 (61) "Public place" means any place to which the public or any substantial group has access.

12 (62) "Public servant" means ~~any~~ an officer or employee of government, including but not limited  
13 to legislators, judges, and firefighters, and any person participating as a juror, ~~advisor~~ adviser, consultant,  
14 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The  
15 term "public servant" includes one who has been elected or designated to become a public servant.

16 (63) "Purposely"--a person acts purposely with respect to a result or to conduct described by a  
17 statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that  
18 result. When a particular purpose is an element of an offense, the element is established although the  
19 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law  
20 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same  
21 meaning.

22 (64) (a) "Serious bodily injury" means bodily injury that:

23 (i) creates a substantial risk of death;

24 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or  
25 process of any bodily member or organ; or

26 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement  
27 or protracted loss or impairment of the function or process of any bodily member or organ.

28 (b) The term includes serious mental illness or impairment.

29 (65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of  
30 another ~~for the purpose of arousing or gratifying, directly or through clothing, in order to knowingly or~~

1 purposely:

2 (a) cause bodily injury to or humiliate, harass, or degrade another; or

3 (b) arouse or gratify the sexual response or desire of either party.

4 (66) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the  
5 penis of another person, penetration of the vulva or anus of one person by any body member of another  
6 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated  
7 by another person for the purpose of arousing or gratifying to knowingly or purposely:

8 (i) cause bodily injury or humiliate, harass, or degrade; or

9 (ii) arouse or gratify the sexual response or desire of either party.

10 (b) Any For purposes of subsection (66)(a), any penetration, however slight, is sufficient.

11 (67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise  
12 another to commit an offense.

13 (68) "State" or "this state" means the state of Montana, all the land and water in respect to  
14 which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the  
15 land and water.

16 (69) "Statute" means any act of the legislature of this state.

17 (70) "Stolen property" means property over which control has been obtained by theft.

18 (71) A "stop" is the temporary detention of a person that results when a peace officer orders the  
19 person to remain in the peace officer's presence.

20 (72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted  
21 alterations in its existing condition, or deposit refuse upon it.

22 (73) "Threat" means a menace, however communicated, to:

23 (a) inflict physical harm on the person threatened or any other person or on property;

24 (b) subject any person to physical confinement or restraint;

25 (c) commit any criminal offense;

26 (d) accuse any person of a criminal offense;

27 (e) expose any person to hatred, contempt, or ridicule;

28 (f) harm the credit or business repute of any person;

29 (g) reveal any information sought to be concealed by the person threatened;

30 (h) take action as an official against anyone or anything, withhold official action, or cause the

1 action or withholding;

2 (i) bring about or continue a strike, boycott, or other similar collective action if the person making  
3 the threat demands or receives property that is not for the benefit of groups that the person purports to  
4 represent; or

5 (j) testify or provide information or withhold testimony or information with respect to another's  
6 legal claim or defense.

7 (74) (a) "Value" means the market value of the property at the time and place of the crime or,  
8 if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within  
9 a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the  
10 value must be determined as follows:

11 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or  
12 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of  
13 the indebtedness less any portion of the indebtedness that has been satisfied.

14 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any  
15 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of  
16 the instrument might reasonably suffer by virtue of the loss of the instrument.

17 (iii) The value of electronic impulses, electronically produced data or information, computer  
18 software or programs, or any other tangible or intangible item relating to a computer, computer system,  
19 or computer network is considered to be the amount of economic loss that the owner of the item might  
20 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss  
21 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition  
22 of the item.

23 (b) When it cannot be determined if the value of the property is more or less than \$500 by the  
24 standards set forth in subsection (74)(a), its value is considered to be an amount less than \$500.

25 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,  
26 whether from the same person or several persons, may be aggregated in determining the value of the  
27 property.

28 (75) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment,  
29 with provision for transport of an operator.

30 (76) "Weapon" means any instrument, article, or substance that, regardless of its primary

1 function, is readily capable of being used to produce death or serious bodily injury.

2 (77) "Witness" means a person whose testimony is desired in any official proceeding, in any  
3 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

4

5 Section 2. Section 45-5-504, MCA, is amended to read:

6 "45-5-504. Indecent exposure. (1) A person ~~who, for the purpose of arousing or gratifying the~~  
7 ~~person's own sexual desire or the sexual desire of any person,~~ commits the offense of indecent exposure  
8 if the person knowingly or purposely exposes the person's genitals under circumstances in which the  
9 person knows the conduct is likely to cause affront or alarm ~~commits the offense of indecent exposure~~  
10 in order to:

11 (a) abuse, humiliate, harass, or degrade another; or

12 (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire  
13 of any person.

14 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to  
15 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

16 (b) On a second conviction, the person shall be fined an amount not to exceed \$1,000 or be  
17 imprisoned in the county jail for a term of not more than 1 year, or both.

18 (c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by  
19 imprisonment in the a state prison for a term of not less than 5 years or more than 100 years and may  
20 be fined not more than \$10,000."

21

- END -

**INDEX TO BILLS IN COMMITTEE**

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

- 
- SB 251**    **SPONSOR:** Halligan, Mike                      **SHORT TITLE:** Clarify assessment of chemical dependency prior to sentencing of DUI  
                    **REFERRED ON:** 01/21/1999                      **HEARD ON:** 02/11/1999                      **(S) Discussed in Committee ON:** 02/12/1999  
                    **EXECUTIVE ACTION:** 02/15/1999 Bill Passed as Amended -- VOTE: 8 - 0  
                    **FINAL DISPOSITION** 04/23/1999 Chapter Number Assigned
- 
- SB 257**    **SPONSOR:** Grimes, Duane                      **SHORT TITLE:** Revise sex offender laws  
                    **REFERRED ON:** 01/21/1999                      **HEARD ON:** 01/28/1999  
                    **EXECUTIVE ACTION:** 02/02/1999 Bill Passed -- VOTE: 8 - 0  
                    **FINAL DISPOSITION** 04/12/1999 Chapter Number Assigned
- 
- SB 258**    **SPONSOR:** Grimes, Duane                      **SHORT TITLE:** Revise domestic abuse laws  
                    **REFERRED ON:** 01/21/1999                      **HEARD ON:** 02/01/1999  
                    **EXECUTIVE ACTION:** 02/05/1999 Bill Passed as Amended -- VOTE: 9 - 0  
                    **FINAL DISPOSITION** 04/16/1999 Chapter Number Assigned
- 
- SB 259**    **SPONSOR:** Grimes, Duane                      **SHORT TITLE:** Submit continued funding for domestic abuse programs to electors  
                    **REFERRED ON:** 01/21/1999                      **HEARD ON:** 01/26/1999  
                    **EXECUTIVE ACTION:** 01/26/1999 Bill Passed -- VOTE: 6 - 0  
                    **FINAL DISPOSITION** 04/22/1999 (H) Died in Standing Committee
- 
- SB 273**    **SPONSOR:** Jabs, Reiny                      **SHORT TITLE:** Create 22nd judicial district & add judge to 11th & 20th districts  
                    **REFERRED ON:** 01/23/1999                      **HEARD ON:** 02/03/1999  
                    **EXECUTIVE ACTION:** 02/05/1999 Bill Passed -- VOTE: 9 - 0  
                    **FINAL DISPOSITION** 04/23/1999 Chapter Number Assigned
- 
- SB 303**    **SPONSOR:** Thomas, Fred                      **SHORT TITLE:** Place hospital costs ahead of attorney fees in work comp cases  
                    **REFERRED ON:** 01/27/1999                      **HEARD ON:** 02/03/1999  
                    **REFERRED ON:** 02/16/1999  
                    **EXECUTIVE ACTION:** 02/12/1999 Bill Passed as Amended -- VOTE: 8 - 1  
                    **TABLED ON:** 02/17/1999  
                    **FINAL DISPOSITION** 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-

**INDEX TO BILLS IN COMMITTEE**

June 30, 1999

**- Committee: (H) Judiciary -**

04:00 PM

- 
- SB 236**    **SPONSOR:** Doherty, Steve                      **SHORT TITLE:** Revise criminal syndicalism law  
                    **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/12/1999  
                    **EXECUTIVE ACTION:** 03/25/1999 Bill Concurred -- **VOTE:** 17 - 3  
                    **FINAL DISPOSITION** 04/20/1999 Chapter Number Assigned
- 
- SB 243**    **SPONSOR:** Thomas, Fred                      **SHORT TITLE:** Revise extended jurisdiction prosecution act; youth sentencing provisions  
                    **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/09/1999  
                    **EXECUTIVE ACTION:** 03/10/1999 Bill Concurred as Amended -- **VOTE:** 13 - 7  
                    **FINAL DISPOSITION** 05/04/1999 Chapter Number Assigned
- 
- SB 250**    **SPONSOR:** Bartlett, Sue                      **SHORT TITLE:** Repeal extended jurisdiction prosecution act  
                    **BY REQUEST OF:** (S) Judiciary Standing Committee  
                    **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/09/1999  
                    **TABLED ON:** 03/10/1999  
                    **FINAL DISPOSITION** 04/22/1999 (H) Died in Standing Committee
- 
- SB 251**    **SPONSOR:** Halligan, Mike                      **SHORT TITLE:** Clarify assessment of chemical dependency prior to sentencing of DUI  
                    **REFERRED ON:** 02/20/1999              **HEARD ON:** 03/22/1999  
                    **EXECUTIVE ACTION:** 03/25/1999 Bill Concurred as Amended -- **VOTE:** 19 - 1  
                    **FINAL DISPOSITION** 04/23/1999 Chapter Number Assigned
- 
- SB 257**    **SPONSOR:** Grimes, Duane                      **SHORT TITLE:** Revise sex offender laws  
                    **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/12/1999  
                    **EXECUTIVE ACTION:** 03/25/1999 Bill Concurred -- **VOTE:** 20 - 0  
                    **FINAL DISPOSITION** 04/12/1999 Chapter Number Assigned
- 
- SB 258**    **SPONSOR:** Grimes, Duane                      **SHORT TITLE:** Revise domestic abuse laws  
                    **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/12/1999  
                    **EXECUTIVE ACTION:** 03/25/1999 Bill Concurred as Amended -- **VOTE:** 18 - 2  
                    **FINAL DISPOSITION** 04/16/1999 Chapter Number Assigned
- 
- SB 271**    **SPONSOR:** Taylor, Mike                      **SHORT TITLE:** Employer immunity for disclosures about former or current employees  
                    **REFERRED ON:** 03/02/1999  
                    **FINAL DISPOSITION** 05/07/1999 Chapter Number Assigned
-

## MINUTES

### MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 28, 1999 at 9:00 A.M., in Room 413 Capitol.

#### ROLL CALL

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 215, SB 257, 1/25/1999  
Executive Action: None

#### HEARING ON SB 257

**Sponsor:** SEN. DUANE GRIMES, SD 20, Clancy

**Proponents:** Judy Wang, Missoula Assistant City Attorney  
Mike McGrath, Lewis and Clark County Attorney  
Rich Ochner, Missoula City Police Detective  
Kirsten LaCroix, Missoula County Attorney's Office  
John Connor, Attorney General's Office

Kathy Sewell, Administrator of Montana Coalition  
Against Domestic and Sexual Violence  
Sharon Hoff, Montana Catholic Conference  
Dennis Paxinos, Yellowstone County Attorney  
Rebecca Moog, Montana Women's Lobby  
Bob Anderson, Montana Sheriffs' and Peace Officers  
Association

Opponents: Scott Crichton, American Civil Liberties Union

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, introduced SB 257, which deals with whether or not sexual gratification needs to be present in order for a sexual crime to be charged.

{Tape : 1; Side : A; Approx. Time Counter : 9.05}

Proponents' Testimony:

Judy Wang, Missoula Assistant City Attorney, stated that two years ago a legislative committee was asked to address a problem in Montana law caused by the fact that sexual assault, indecent exposure, and sexual intercourse without consent all require proof of sexual arousal or gratification on behalf of the victim or the perpetrator as an element of the crime. The problem is that sex crimes are really assaults on victims of a sexual nature but may not involve sex at all. These crimes are violent and about power, not passion.

An instance that addresses this issue is a situation where a number of years ago a husband was upset that his wife had been out late and as a result he proceeded to beat her. He kicked her and thrust his hand more than once into her vagina and then tried to also insert a deodorant can in her vagina. Peace officers in Missoula were concerned that she had been raped and filed the case as a rape. The county attorney determined that there was no evidence that she was sexually aroused or gratified and also there was no evidence that the perpetrator was sexually aroused or gratified. This was not a sexual intercourse without consent case. It was a misdemeanor case.

She also explained another case of indecent exposure where a man was driving around a major parking lot with his pants down. There were many children around. When her adult victim saw him, it was not clear that he had an erection. He was charged with indecent exposure but there is a difficult proof problem.

Another case involved a 17-year-old girl who on her first day at a new job had a 40-year-old boss who thought that as a part of her orientation program she should be exposed to seeing his genitals and also should be exposed to him fondling her breasts. She was not sexually aroused or gratified. At trial, he claimed that it was all a horrible mistake and he was not aroused or gratified. He was convicted, but getting the conviction was a major problem.

This bill adds language to address sexual intercourse without consent when sexual arousal or gratification cannot be proven but it can be proved that it was done to humiliate or degrade the victim or done to cause bodily injury to the victim. This is a change in Montana law which is needed to effectively prosecute people who are inflicting violent crimes on others. Part of the element of the crime should not be sexual gratification or arousal alone. If it is done to humiliate or degrade, that should be an element as well. Written testimony of Ms. Wang, EXHIBIT(1).

Mike McGrath, Lewis and Clark County Attorney, remarked that a few years ago an elderly woman was brutally beaten and raped by a transient. In the course of this assault, which took place over a period of many hours, he inserted a number of things into her vagina. By the time of trial, she was not able to go to trial. She was placed in a nursing home in another state and her condition deteriorated to the point where she was not able to testify. At trial, they charged the transient with two offenses, aggravated assault for the beating and sexual intercourse without consent. They proceeded to trial with sexual intercourse without consent even though the victim could not testify because they had testimony from the medical personnel at the emergency room that they had found cigarette papers that had been inserted into her vagina. They convicted the man for the offense of aggravated assault but the jury acquitted the man on sexual intercourse without consent. In interviewing jurors after the trial, they were informed that the jurors did not feel that they could prove the statutory requirement of sexual gratification for either party.

Rich Ochner, Missoula City Police Detective, claimed that they have several cases where the man is impotent and has inflicted objects into children. There is no way to show sexual gratification. In years past, the rape statute did not cover coercion. The legislature saw this as a problem and added coercion which helped them to be able to hold people accountable and responsible for their actions.

In one of his cases, a six week old child was molested by her father. He said that he was under the influence of a muscle

relaxer which caused him to be temporarily impotent. This man took responsibility because his child was involved, but a very zealous defense attorney may have been able to defeat the charge.

Another case involved a man in a fraternity who called a group of people to watch as he took a very intoxicated female and entered a beer bottle into her to the point where he caused a vaginal tear one inch in size. The medical examiner said this was equivalent to a woman giving childbirth. If the statute contained an element that showed degradation and humiliation, it would fit the crime.

In his interrogations or interviews, the offender often tells him that they made a mistake and they know it was humiliating and degrading and the act was not to please either person but just that an urge overcame this person.

**Kirsten LaCroix, Missoula County Attorney's Office**, related that this bill will fill a void that needs to be filled. Montana does not have common law crimes. Every crime has to be specified in statute. Sex offenders are not being charged due to the current law. She has had a case where a five month old infant's babysitter impaled the infant, without her diaper on, upon a blunt object which caused severe vaginal tearing. They are required under the statute to prove that this person committed the crime for sexual reasons. The woman was not charged.

Another case involved a young boy in the care of his foster father who in the course of several months, had his genitals repeatedly scrubbed to the point that his testicles were raw from being scrubbed with a scrub brush. Without a conviction, they are unable to get sex offender treatment for this person.

In a case that she prosecuted, a man who had four girls molested all the girls. They could prosecute for the molestation of one of these girls. She had to put all the children on the stand to testify against their parents. The defendant refused to acknowledge that there was a sexual problem and refused to get sexual offender treatment.

In approximately two-thirds of sex offender cases that come across her desk, she does not file charges because she knows that she cannot prove sexual gratification as required in the current statute.

**John Connor, Attorney General's Office**, conveyed that they have been struggling to figure out how to repair the statutes that talk about intent or purpose with respect to sex crimes. They are trained to believe that a person commits a sex crime because that person is trying to gain power of some sort over the victim.

This bill is a good step forward in terms of sound public policy. It simply focuses the attention of the fact finder on the true motivation of the offender.

**Kathy Sewell, Administrator of Montana Coalition Against Domestic and Sexual Violence**, remarked that she is a rape survivor. She was raped in California when she was quite young. If her rape had gone to court in Montana under this statute, it would not have been considered rape. The man entered her with a knife and damaged her to the point where she can no longer have children. Her four-year-old son viewed the attack. This man had no sexual gratification. Only about 25% of the rape victims in Montana report the rape to law enforcement. Women know that they will have to prove sexual gratification and this is a very difficult place to put victims when they are already trying to figure out what they are going to do with their lives. Treatment for sexual offenders cannot be obtained if they are not convicted.

**Sharon Hoff, Montana Catholic Conference**, stated that they base their positions in the legislature on the dignity of the human person. Only having a definition of sexual gratification, flies in the face of the dignity of a person. The additional language of bodily injury, harassment, and degrading is critical to the statute.

**Dennis Paxinos, Yellowstone County Attorney**, maintained that the reason for sex offenses usually has nothing to do with sexual gratification. This is about power, control and revenge. This language will allow the state to present a case which will involve the sex offender getting treatment.

**Rebecca Moog, Montana Women's Lobby**, rose in support of SB 257.

**Bob Anderson, Montana Sheriffs' and Peace Officers Association**, rose in support of SB 257.

Additional written testimony in support of SB 257:

**Robert M. McCarthy, Butte-Silver Bow County Attorney**, EXHIBIT(2)

**Aileen Miller, Deputy Hill County Attorney**, EXHIBIT(3)

**Joan Gonzales and Michael Grayson, County Attorney's Office, Anaconda-Deer Lodge County**, EXHIBIT(4)

**James A. Hubble, Attorney**, EXHIBIT(5)

**Gary Ryder, Treasure County Attorney**, EXHIBIT(6)

**Don Morman, Missoula Sheriff's Dept.**, EXHIBIT(7)

**Lt. Edwin R. Brannin, Missoula Sheriff's Dept.**, EXHIBIT(8)

**Ron J. Silvers, M.Ed., LPC, Clinical Member MSOTA**, EXHIBIT(9)

**Jamie Sowre, YWCA Sexual Violence Services Coordinator**, EXHIBIT(10)

Todd S. Whipple, Deputy Gallatin County Attorney, EXHIBIT(11)  
CC Ibsen, Missoula County Deputy Sheriff, EXHIBIT(12)  
Michelle T. Friend, Deputy Yellowstone County Attorney,  
EXHIBIT(13)  
Jennifer Gibson, Rural Crime Victim Advocate, EXHIBIT(14)

{Tape : 1; Side : A; Approx. Time Counter : 9.30}

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union, raised a concern regarding the vagueness of the language and its applicability. This bill applied outside of specifics could complicate issues for people. A shy guy in the locker room who is having towels snapped at him by aggressive macho dudes, could become an element in sexual harassment cases. He also saw it becoming a tool in divorce cases. He is especially concerned about the vagueness of language that speaks to harassing, degrading, or humiliating. He would not want the state to infer from this language that it is appropriate for them to start defining what type of sexual interactions between consenting adults is their business. Some people do engage in consensual sexual acts that could be defined as harassing, degrading, or humiliating. Some people find pleasure in that. He questioned whether this could be getting to some of the issues in the Driesen case or in the Griswold case. This in no way undermines the heartfelt and important testimony of defending women and children against sexual perpetration.

{Tape : 1; Side : A; Approx. Time Counter : 9.34}

Questions from Committee Members and Responses:

SEN. DOHERTY questioned why the indecent exposure language added the word "abuse". Ms. Wang explained that they reviewed language from 30 different states and adopted language from the District of Columbia. They did not leave "bodily injury" in the indecent exposure statute because they could not envision a factual scenario where indecent exposure would involve a person causing bodily injury to a victim. There could be the circumstance where they were causing abuse. Abuse is very difficult to define. Since the definition of bodily injury has been used under Montana law for many years, it is used specifically where it applies.

SEN. DOHERTY questioned whether an over zealous prosecutor could use this statute to infringe on private consensual activities. Ms. Wang stated they are not amending the core law and are not doing anything to change the part of the crime dealing with "without consent". Towel slapping in a locker room is not without consent sexual contact. With indecent exposure, a person

who exposes himself is likely to cause affront or alarm. A locker room is where one would dress or undress.

**Mr. Connor** maintained that the changes are in specifically defined statutes. Working in the areas where legislation is put into effect, worst case scenarios are usually not encountered. The majority of complaints his office receives about county attorneys involve situations where someone is not happy with the fact that the county attorney has decided not to prosecute a case. The worst case scenario will not occur because both the city and county attorneys offices have far too much to do to focus on situations that do not constitute egregious criminal conduct.

**SEN. HALLIGAN** remarked that it is very important that the record be clear on the sexual response portion of this legislation. **Mr. Connor** explained that his understanding of the term is having to prove a potential physical response as opposed to a mental state on the part of the victim or the offender. Proving response includes actually visualizing a physical response as opposed to desire which is in the mind of the person involved.

**SEN. HALLIGAN** questioned whether the other proponents agreed with **Mr. Connor's** definition. The proponents agreed.

**Mr. Connor** further stated that the terms "humiliate, harass, degrade" are similar to terms found in other areas of the code. Stalking uses the terms "humiliate or intimidate". At trial, the jury is told that those terms have common understanding and common meaning and if there is a problem, they are defined by dictionary definitions.

**SEN. HALLIGAN** remarked that the word "intimidate" is not included in the wording "to humiliate, harass, or degrade". He questioned why the word "intimidate" was not used. **Mr. Connor** believed harassment could also involve intimidation.

**Mr. Wang** explained that the language they used from the District of Columbia statute did not use the word intimidate. She added that she believed the language covers intimidation factors. Also, these are alternative reasons.

**CHAIRMAN GROSFIELD** was concerned with the vagueness of the language allowing for applicability which was not intended by the legislation. An example would be a legislator who presented a bill that some people did not like. After the hearing, the legislator could be in a crowded elevator and inadvertently brush against a female's breast. Later, she decided to hire a lawyer. This statute could be waived in the face of an innocent person. He was concerned about this statute being misapplied. **Ms. Wang**

responded that in any criminal case mental state needed to be proven. There would need to be proof that someone was acting knowingly and that they were aware of their conduct or that they acted purposely and had conscious object to engage in that conduct. In the above example, there would be no intent on the legislator's part to humiliate, harass, degrade, or embarrass the person in the elevator. There may be circumstances where something like that could evolve into an offense. When she works with sex offenders, there are times in a crowded area where men or women will repeatedly brush up against the genitals of another person.

**Mr. Crichton** commented about a situation where a young girl mooned some boys who were riding on a bus. This would be knowingly exposing yourself to shock or to alarm. Anyone who is designated a sexual offender has to register for life. He was concerned about a youthful offense. He could also see this applied in an argument in a divorce proceeding.

**SEN. BARTLETT** stated that the statute on incest used the term "sexual contact". She added that the Griesen? case affected the deviate sexual conduct but the definition of deviate sexual conduct includes the term "sexual contact". She asked for an analysis of how the changes in the definitions might come into play in relation to incest or deviate sexual conduct. **Ms. LaCroix** stated that the incest statute incorporates, in the substantive statute, the definition of sexual contact. They are not changing the core requirements of what the state needs to prove in the offense itself. Incest is a good example of an umbrella statute. If there is a family relationship, they can charge incest.

**SEN. BARTLETT** raised a concern about a teenager who could be angry with her father for grounding her and decide to go to a school counselor and say that her dad has been playing around with her. Using the language of sexual contact including touching through clothing, could she make a case against her father for incest when nothing of the kind really happened.

**Ms. LaCroix** stated that they deal with these questions all the time. The first question she asks herself is whether she believes the person has been sexually violated. This statute will not change the things they look at when they assess credibility. They generally try to find corroborating evidence and expert opinions on whether or not this person is truthful.

*{Tape : 1; Side : B; Approx. Time Counter : 9.55}*

Closing by Sponsor:

SEN. GRIMES asked Mr. Ochner to address false or weak allegations. Mr. Ochner explained that his job is to be the objective fact finder. The first thing he reviews is the motivation for the person making the complaint. He needs to be convinced of the facts before he can even attempt to convince a prosecutor who needs to convince 12 people of the facts. If he is not convinced and there is no corroborating evidence, in most cases he will not even take the case to a prosecutor.

SEN. GRIMES remarked that every community is affected by these type of circumstances. It is very sad that this type of legislation is necessary, but it is also very important legislation.

#### HEARING ON SB 215

Sponsor: SEN. SUE BARTLETT, SD 27, Helena and Unionville

Proponents: Mike McGrath, Lewis and Clark County Attorney  
Rich Ochner, Missoula City Police Detective  
Kirsten LaCroix, Missoula County Attorney's Office  
John Connor, Attorney General's Office  
Dennis Paxinos, Yellowstone County Attorney

Opponents: None

#### Opening Statement by Sponsor:

SEN. SUE BARTLETT, SD 27, Helena and Unionville, introduced SB 215. The only substantive change is on line 15 which makes the maximum penalty for negligent homicide 20 years instead of 10 years. She believes that the sentence range for crime should reflect the severity of the crime and be comparable to the severity of other crimes that have the same kind of sentence range. A ten year penalty for someone convicted of negligent homicide does not meet that test. Negligent homicide is a crime that has the broadest set of fact circumstances under the law that could occur for someone to end up charged with this crime.

There are people who have been convicted of negligent homicide who have received suspended sentences. The facts of their particular case were sufficient to convince the judge that a suspended sentence was an appropriate punishment. There have been other circumstances where the judge did not feel that 10 years was an adequate penalty but that was the highest penalty available.

There was a case in Great Falls where an individual was convicted of aggravated assault. The crime included an individual shaking

MINUTES

MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 1,  
1999 at 10:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

Members Excused: Sen. Ric Holden (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 243, SB 258, 1/30/1999  
Executive Action: SB 232, SB 236, SB 257

HEARING ON SB 243

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: John Larson, District Judge from Missoula

Opponents: None

Discussion:

SEN. DOHERTY remarked that there was testimony concerning the definition section. The amendments would keep the definition of criminal incitement to mean the advocacy of crime, malicious damage, or injury to property or violence. Lines 24 and 25 refer to criminal actions. The specificity requested by Scott Crichton, American Civil Liberties Union, which related to specific crimes, has been inserted. The advocacy and the crime need to be the same. "Imminent" was redefined to mean "immediate, impending, on the verge of happening".

Vote: Motion carried unanimously - 8-0.

Motion: SEN. DOHERTY moved that SB 236 DO PASS AS AMENDED.

Discussion:

SEN. DOHERTY remarked that this language is a rewrite of an unconstitutionally vague statute. This will clarify current law.

CHAIRMAN GROSFIELD reported that additional amendments were prepared for SEN. HOLDEN.

SEN. DOHERTY claimed that the amendments were not within the title of bill. The bill revises the offense of criminal syndicalism in section 236. He added that SEN. HOLDEN'S amendments would eliminate the offense of criminal syndicalism.

Vote: Motion carried 7-1 with SEN. GRIMES voting no.

EXECUTIVE ACTION ON SB 257

CHAIRMAN GROSFIELD remarked that there is some concern about unintended consequences due to the broad terminology in the legislation. Ms. Wang maintained that the criminal law is unique in the way it is structured in that it includes definitions. All of the definitions plug into criminal law, which call for the offender to act knowingly or purposely. A person acts knowingly when they are aware of their conduct. A person acts purposely when they have a conscious object to engage in that conduct. A peace officer who has the facts at hand and a prosecutor who evaluates all the facts need to use a lot of wisdom and discretion to make their decisions.

SEN. BARTLETT questioned why language wasn't stricken which pertains to the only purpose of the act being to arouse or gratify a sexual desire or response. Ms. Wang clarified that historically these crimes have been looked at as sexual crimes.

It is possible that a sex crime could happen when there is sexual contact without consent or there is sexual intercourse without consent and they are not necessarily trying to humiliate or degrade. There are some crimes where this would still apply.

**SEN. BARTLETT** remarked that she has been involved with these issues for 25 years. She finds it gratifying to hear from law enforcement and prosecutors that these kinds of statutes are necessary and that these crimes come out of an intense desire to control, humiliate or have power over another human being. The progress that has been made in the state is worth noting. She recognized the courage of women who have had these experiences to come to public settings such as the legislature and speak publicly about very personal and very difficult experiences that they have had.

**CHAIRMAN GROSFIELD** asked for clarification of lifetime registration for sex offenders in the indecent exposure statutes.

**SEN. GRIMES** remarked that in the case of "moonning" by a highschool student, the intent was humor. However, if this involved an adult on a playground full of children, it may be considered indecent exposure.

**SEN. BARTLETT** added that the indecent exposure statute was found on page 11 of the bill and registration would take effect for a third or subsequent conviction. She added that it is her understanding that repeated indecent exposure may involve an individual who was on the path toward more predatory and physically injuring types of sexual offenses.

**SEN. DOHERTY** emphasized that it is important for the record to show that the Committee understands the difference between the beginning of a march down a predatory path and a "prank". They would hope that the prosecutors understand that difference as well. The Committee would be very concerned if an overzealous prosecutor took up that cause.

**SEN. GRIMES** agreed and added that if a young person does something on a playground, there are times when counselors become overly concerned. The seriousness of this occurring in the adult community is why a bill like this is needed.

**Motion/Vote:** **SEN. GRIMES** moved that **SB 257 DO PASS**. Motion carried unanimously.

**CHAIRMAN GROSFIELD** stated that someone looking for the legislative history on this bill would not necessarily look to the testimony on SB 258. He repeated that it is too bad that we are in the position of needing to bring this legislation forward.

This should have been addressed a long time ago. This is not about sexual gratification or desire, it is about power and violence. This is a very serious issue.

Vote: Motion carried unanimously - 8-0.

SEN. BARTLETT explained that she has requested a study resolution which would address the sentencing statutes, sentencing data information collection and management, and issues related to sentencing.

CHAIRMAN GROSFIELD requested that the draft be more specific and more aggressive. We are unable to obtain information from district courts and the state regarding the status of sentencing. Most of the information which has been prepared is shelf art with little coordination. This information would not only be useful to the judiciary but also the judiciary committees in the legislature.

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on March 12, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

#### ROLL CALL

##### Members Present:

Rep. Robert C. Clark, Chairman (R)  
Rep. Dan McGee, Vice Chairman (R)  
Rep. Diana Wyatt, Vice Chairman (D)  
Rep. Chris Ahner (R)  
Rep. Shiell Anderson (R)  
Rep. Paul Clark (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Jore (R)  
Rep. Sam Kitzenberg (R)  
Rep. Brad Molnar (R)  
Rep. Mark Noennig (R)  
Rep. Jim Shockley (R)  
Rep. Loren Soft (R)  
Rep. Carol Williams (D)  
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 273, SB 257, SB 258, SB 236, 3/4/1999

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 173 - 550}

Closing by Sponsor:

Senator Jabs made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 24}

HEARING ON SB 257 AND SB 258

Sponsor:

Senator Grimes presented SB 257 and SB 258.

{Tape : 2; Side : A; Approx. Time Counter : 24 - 117}

Proponents:

Judy Wang, Missoula City Attorney

{Tape : 2; Side : A; Approx. Time Counter : 117 - 271}

EXHIBIT(9)

EXHIBIT(10)

Mike McGrath, Lewis & Clark Co. Attorney

{Tape : 2; Side : A; Approx. Time Counter : 271 - 343}

Dennis Paxinos, Yellowstone Co. Attorney

{Tape : 2; Side : A; Approx. Time Counter : 343 - 381}

Kristine LaCroix, Missoula County Attorney

{Tape : 2; Side : A; Approx. Time Counter : 381 - 550}

Richard Ochner, Missoula City Police

{Tape : 2; Side : B; Approx. Time Counter : 0 - 59}

Tootie Welker, Sanders County Coalition for Families

{Tape : 2; Side : B; Approx. Time Counter : 59 - 106}

EXHIBIT(11)

John Connor, Attorneys General Office

{Tape : 2; Side : B; Approx. Time Counter : 106 - 138}

George Corn, Ravalli County Attorney

{Tape : 2; Side : B; Approx. Time Counter : 138 - 185}

Deb Vorhees, Montana Coalition Against Domestic Violence

{Tape : 2; Side : B; Approx. Time Counter : 185 - 199}

Rebecca Moog, Montana Women's Lobby

{Tape : 2; Side : B; Approx. Time Counter : 199 - 212}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 212 - 453}

Closing by Sponsor:

Senator Grimes made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 453 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 120}

HEARING ON SB 236

Sponsor:

Senator Doherty presented SB 236.

{Tape : 3; Side : A; Approx. Time Counter : 120 - 140}

Proponents:

John Connor, Attorneys General Office

{Tape : 3; Side : A; Approx. Time Counter : 140 - 244}

George Corn, Ravalli County Attorney

{Tape : 3; Side : A; Approx. Time Counter : 244 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 20}

Opponents:

None

Informational Testimony:

Scott Creighton, ACLU

{Tape : 3; Side : B; Approx. Time Counter : 20 - 57}

Questions from Committee Members and Responses:

{Tape : 3; Side : B; Approx. Time Counter : 57 - 214}

Closing by Sponsor:

Senator Doherty made closing statements.

{Tape : 3; Side : B; Approx. Time Counter : 214 - 278}

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN ROBERT C. CLARK**, on March 25, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Robert C. Clark, Chairman (R)  
Rep. Dan McGee, Vice Chairman (R)  
Rep. Diana Wyatt, Vice Chairman (D)  
Rep. Chris Ahner (R)  
Rep. Shiell Anderson (R)  
Rep. Paul Clark (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Jore (R)  
Rep. Sam Kitzenberg (R)  
Rep. Brad Molnar (R)  
Rep. Mark Noennig (R)  
Rep. Jim Shockley (R)  
Rep. Loren Soft (R)  
Rep. Carol Williams (D)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Bill Eggers (D)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted:

Executive Action: SB 476-Tabled; SB 186-Be  
concurrent in as amended, SB

153-Be concurred in as amended, SB 251-Be concurred in as amended; SB 236-Be concurred in, SB 257-Be concurred in,; SB 258-Be concurred in as amended, SB 372-Be concurred in as amended, SB 472-Be concurred in as amended.

EXECUTIVE ACTION ON SB 186

Motion: REP. CURTISS moved that SB 186 BE CONCURRED IN.

Motion/Vote: REP. R. CLARK moved that SB 186 BE AMENDED. Motion carried 20-0.

EXHIBIT(1)

Motion: REP. NOENNIG moved that SB 186 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. SHOCKLEY moved that SB 186 BE AMENDED. Motion carried 20-0.

EXHIBIT(2)

Motion: REP. SHOCKLEY moved that SB 186 BE CONCURRED IN AS AMENDED.

Motion: REP. HURDLE moved that SB 186 BE TABLED. Motion failed on a voice vote.

Motion/Vote: REP. SHOCKLEY moved that SB 186 BE AMENDED. Motion carried 17-3 with Anderson, Jore, R. Clark voting no.

Motion/Vote: REP. WYATT moved that SB 186 BE AMENDED. Motion carried 16-4 with R. Clark, Jore, McGee, and Molnar voting no.

EXHIBIT(3)

Motion: REP. P. CLARK moved that SB 186 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. P. CLARK moved that SB 186 BE AMENDED. Motion carried 11-9 with Ahner, Anderson, R. Clark, Curtiss, Jore, McGee Shockley, Soft, and Younkin voting no.

EXHIBIT(4)

Motion/Vote: REP. ANDERSON moved SB 186-RECONSIDER P. CLARK'S AMENDMENT due to a possible conflict with R. Clark's 1st amendment that was passed. Motion carried 13-7 on a hand vote.

Motion/Vote: REP. P. CLARK SB 186-WITHDRAWS HIS AMENDMENT THEN ASKS SB 186 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with Gallus, Gutsche, Hurdle, Noennig, Soft, and Williams voting no.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 346}

EXECUTIVE ACTION ON SB 153

Motion: REP. YOUNKIN moved that SB 153 BE CONCURRED IN.

EXHIBIT(5)

Motion/Vote: REP. SHOCKLEY moved that SB 153 BE AMENDED. Motion carried 18-2 with Jore and McGee voting no.

Motion/Vote: REP. YOUNKIN moved that SB 153 BE CONCURRED IN AS AMENDED. Motion carried 16-4 with R. Clark, Curtiss, Jore, and McGee voting no on a voice vote.

{Tape : 1; Side : B; Approx. Time Counter : 346 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 73}

EXECUTIVE ACTION ON SB 251

Motion: REP. SHOCKLEY moved that SB 251 BE CONCURRED IN.

Motion/Vote: REP. WILLIAMS moved that SB 251 BE AMENDED. Motion carried 19-1 with Jore voting no.

Motion/Vote: REP. GALLUS moved that SB 251 BE CONCURRED IN AS AMENDED. Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 73 - 150}

EXECUTIVE ACTION ON SB 236

Motion: REP. ANDERSON moved that SB 236 BE CONCURRED IN.

Motion: REP. JORE moved that SB 236 BE AMENDED.

Substitute Motion/Vote: REP. YOUNKIN made a substitute motion SB 236-AMENDMENT. Substitute motion failed 7-13 with Anderson, P. Clark, Curtiss, Eggers, Facey, Gutsche, Hurdle, Jore, Kitzenberg, McGee, Wyatt, Molnar, and Soft voting no.

(returned back to the JORE amendment)

Jore AMENDMENT failed on a voice vote.

Motion/Vote: REP. ANDERSON moved that SB 236 BE CONCURRED IN.

Motion carried 17-3 with R. Clark, Curtiss, and Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 150 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 133}

EXECUTIVE ACTION ON SB 257

Motion: REP. YOUNKIN moved that SB 257 BE CONCURRED IN.

Motion/Vote: REP. SHOCKLEY moved that SB 257 BE AMENDED. Motion failed 1-19 on a voice vote.

Motion/Vote: REP. YOUNKIN moved that SB 257 BE CONCURRED IN.  
Motion carried unanimously.  
{Tape : 2; Side : B; Approx. Time Counter : 133 - 550}  
{Tape : 3; Side : A; Approx. Time Counter : 0 - 113}

EXECUTIVE ACTION ON SB 258

Motion: REP. YOUNKIN moved that SB 258 BE CONCURRED IN.  
Motion/Vote: REP. WYATT moved that SB 258 BE AMENDED. Motion carried 19-1 with Jore voting no.  
Motion: REP. YOUNKIN moved that SB 258 BE CONCURRED IN AS AMENDED.  
Motion: REP. SHOCKLEY moved that SB 258 BE AMENDED.  
Motion/Vote: REP. SHOCKLEY moved SB 258-OFFERS SUBSTITUTE AMENDMENT. Motion carried unanimously.  
Motion: REP. GALLUS moved that SB 258 BE CONCURRED IN AS AMENDED.  
Motion/Vote: REP. NOENNIG moved that SB 258 BE AMENDED. Motion carried unanimously.  
Motion/Vote: REP. ANDERSON moved that SB 258 BE CONCURRED IN AS AMENDED. Motion carried 18-2 with Jore and Molnar voting no.  
{Tape : 3; Side : A; Approx. Time Counter : 113 - 414}

EXECUTIVE ACTION ON SB 372

Motion: REP. YOUNKIN moved that SB 372 BE CONCURRED IN.  
Motion/Vote: REP. ANDERSON moved that SB 372 BE AMENDED. Motion carried unanimously.

EXHIBIT(6)

Motion: REP. AHNER moved that SB 372 BE CONCURRED IN AS AMENDED.  
Motion/Vote: REP. ANDERSON moved that SB 372 BE AMENDED. Motion failed 8-12 with P. Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Kitzenberg, Noennig, Shockley, Soft, Williams, and Wyatt voting no.  
Motion/Vote: REP. AHNER moved that SB 372 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with R. Clark, Curtiss, Jore, McGee, Molnar, and Soft voting no.  
{Tape : 3; Side : A; Approx. Time Counter : 414 - 550}  
{Tape : 3; Side : B; Approx. Time Counter : 0 - 193}

EXECUTIVE ACTION ON SB 472

Motion: REP. AHNER moved that SB 472 BE CONCURRED IN.